IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 25TH JANUARY 2007 / 5TH MAGHA 1928

CRP.No. 319 of 2006()

AGAINST THE ORDER DATED 14/03/2006 IN EP 141/2005. IN OS.1025/2000 of MUNSIFF COURT, ALATHUR

.....

REVN. PETITIONER: JUDGEMENT DEBTOR

N.SIVAKUMAR, S/O.KRISHNANKUTTY NAIR,
KUZHALMANNAM SERVICE CO-OP. BANK EMPLOYEE,
NELLAYAM VEEDU, KALAPPETTY, KUZHALMANNAM VILLAGE,
ALATHUR TALUK.

BY ADV. SRI.SAJAN VARGHEESE K.
SRI.LIJU. M.P

RESPONDENTS: DECREE HOLDER

RAMASWAMY UDAYAR (DIED),
LEGAL HEIR BHASKARADAS, S/O.RAMASWAMY UDAYAR,
KOTTIYOTTUKALAM, POLPULLY AMSOM, PALAKKAD,
REP. BY P/A.HOLDER,P.R.RAMACHANDRAN,S/O.RAMAN,
THACHAMOOCHIKKAL,VEILAYANCHATHANUR AMSOM & DESOM,
ALATHUR TALUK.

BY ADV. SRI.V.V.ASOKAN
SMT.S.AMINA

THIS CIVIL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/01/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

C.R.P.NO.319/06

ORDER ON I.A.1416/06 & I.A.2485/06

DISMISSED.

25.1.07. SD/-M.SASIDHARAN NAMBIAR,JUDGE.

/TRUE COPY/

PA TO JUDGE.

M.SASIDHARAN NAMBIAR,J.

C.R.P.NO.319 OF 2006

DATED THIS THE 25th DAY OF JANUARY, 2007

ORDER

Petitioner is judgment debtor and respondent decree holder in E.P.141/06 in O.S.1025/2000 on the file of Munsiff Court, Alathur. For realisation of the decree debt, respondent as the legal heir of deceased decree holder through power of attorney holder filed E.P. 141/05 contending that petitioner has sufficient means to pay the decree debt, but willfully neglected to pay the same. Petitioner contended that deceased decree holder has other legal heirs also and one of the sons alone is not entitled to file the execution petition and the succession certificate relied on by the decree holder shows that the decree debt is to be recovered not from petitioner but one Sivaraman and therefore respondent is not entitled to realise the amount. Learned Munsiff as per order dated 14.3.06, over ruling the objection, ordered his arrest, which is challenged in this revision petition filed under Section 115 of Code of Civil Procedure.

2. Learned Counsel appearing for petitioner argued that copy of succession certificate issued by Munsiff Court, Palakkad shows that the debt to be recovered from Sivaraman in O.S.1025/2000 on the file of Munsiff Court, Palakkad and petitioner is Sivakumar and unless the

name in Ext.A2 is corrected, respondent is not entitled to execute the order.

3. The impugned order passed by learned Munsiff shows that decree was passed by Munsiff Court, Palakklad. Ext.A1 shows that succession certificate was issued to realise the decree debt due to deceased Ramaswamy Udayar, father of respondent, in O.S.1025/2000 on the file of that Court. It is the same decree executed in E.P.141/05.

4. True, name of judgment debtor is mentioned as Sivaraman instead of Sivakumar in Ext.A1. But I do not find that the mistake in the name as Sivaraman instead of Sivakumar, is fatal as the decree debt is the debt due in O.S.1025/00. In such circumstances on that ground the order passed by the executing Court cannot be challenged.

5. Learned Munsiff has specifically stated that petitioner did not raise a contention to the effect that he has no means to pay or that there is any other valid reason for non payment of the decree debt. In such circumstances, finding of learned Munsiff that petitioner has sufficient means and he neglected to pay the decree debt is perfectly correct and warrants no interference.

6. Learned Counsel appearing for petitioner then submitted that petitioner may be permitted to pay the balance decree debt in equal monthly instalments. As per order of this Court dated 7.6.06,

petitioner was directed to deposit Rs.15,000/-. Learned Counsel appearing for petitioner submitted that the amount was deposited and the balance due is about Rs.50,000/- and interest. Petitioner is permitted to pay the balance decree debt in ten equal monthly instalments with a default clause.

Petitioner to pay the entire balance decree debt in ten equal monthly instalments. The first instalment falls due on the 19th day of February 2007 and the subsequent due dates 19th day of every month. If petitioner defaults to pay any two instalments, executing Court to proceed with the order for arrest.

M.SASIDHARAN NAMBIAR,JUDGE

Acd